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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,630	06/08/2007	Darren John Hotchkin	043153-9104-00	3309
23409 7590 10/27/2009 MICHAEL BEST & FRIEDRICH LLP 100 E WISCONSIN AVENUE Suite 3300 MILWAUKEE, WI 53202				
EXAMINER				
ADDIE, RAYMOND W				
ART UNIT		PAPER NUMBER		
3671				
MAIL DATE		DELIVERY MODE		
10/27/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/591,630

**Applicant(s)**

HOTCHKIN, DARREN JOHN

**Examiner**

Raymond W. Addie

**Art Unit**

3671

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/5508)
- Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 11-17, 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Casey US 4,553,875.

Casey discloses a lightweight, portable, roadway barrier comprising:

An impact resistant framework (25, 34, 36, 38, 46, 15) further comprising:

A plurality of upright members (25, 46) disposed at the ends and interiorly of the barrier.

At least one longitudinal member (34, 36, 38) extending along the length of the barrier  
and connected to each of the upright members (25, 46).

The barrier further comprising:

A pair of panels (15) mounted to opposite sides of the barrier for deflecting vehicles on  
impact with the barrier. See Figs. 1-5.

Wherein the upright members (25, 46) are removably attached to the roadway.

With respect to claims 2-4 Casey discloses the internal structural framework provides sufficient rigidity for resisting collapse of the barrier, in response to a vehicle impact.

The side panels (15) principally function to deflect a vehicle on impact. Wherein, the interconnected arrangement of upright (25) and longitudinal members (34, 36, 38) provides the internal structural framework with sufficient rigidity for resisting direct collapse of the barrier, in the region of impact. And, although not explicitly disclosed, it is inherent, the internal structural framework resists uncontrolled twisting of the barrier around the longitudinal barrier axis, due to the manner in which it is removably connected to the roadway surface. See Cols. 3-5, line 15..

With respect to claims 5, 6, 11-13 Casey discloses the side panels are made of plastic and inherently, do not make a substantial contribution to the rigidity of the barrier. Further, at least one of said longitudinal members extends along the length of the barrier and is connected at opposite ends to the upright end members (25) and interior upright members (25, 46). Wherein the upright members (25) are formed of steel plate and comprise sections as at 53, 61) that are connected to said side panels (15). See Col. 4, Ins. 1-15.

With respect to claims 14-17 Casey also illustrates in Fig. 5 that at least one longitudinal member (34) is positioned mid-height or higher within the barrier interior. Further, Casey discloses a plurality of interior upright members (46) can be positioned against the end uprights (25) or between said end uprights (25). Hence, it is inherent at least one interior upright member (46) could be located midway between the end uprights. See Figs. 1, 5; Col. 3, In. 5-Col. 4, In. 15.

With respect to claims 19-21 Casey clearly illustrates each side panel (15) comprise a series of lengthwise grooves as at (54, 56) defining panel ribs there between. Wherein the side panels (15), at a lower side surface (between 56 and 58) diverge outwardly from each other as viewed from the ends of the barrier. See Fig. 5; Col. 4, Ins. 16-30.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Casey US

4,553,875 in view of Lohrman US 5,145,278.

Casey discloses essentially all that is claimed, to include the use of side panels (15).

What Casey does not disclose is the use of steel side panels. However, Lohrmann teaches it is known to make traffic barriers (10) from steel, because "it is simple to manufacture traffic barriers of predetermined strengths". See Col. 4, Ins. 15-30.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to make the traffic barrier of Casey, from steel, as taught by Lohrmann, in order to facilitate forming traffic barriers "of predetermined strengths, as required by design".

3. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Casey '875.

Casey discloses essentially all that is claimed, to include at least partially filling the barrier with concrete. But does not disclose the weight of the barrier. However, it would be obvious to one of ordinary skill in the art, at the time the invention was made, the barrier could be partially or completely filled with concrete, in order to vary the weight, and hence, impact resistance/displacement resistance of the traffic barrier. See Col. 3, lns. 15-50.

4. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Casey '875 in view of Anderson US 2003/0086761 A1.

Casey discloses essentially all that is claimed, but does not disclose lifting the barrier with a crane. However, Anderson teaches it is known to provide traffic barriers (10) with lift ring (30) to receive a hoist hook from a crane for lifting the traffic barrier. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the traffic barrier of Casey, with a lift ring, as taught by Anderson, in order to facilitate lifting and placing the barrier. See Figs. 1, 3A; paragraph [0021].

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond W. Addie whose telephone number is 571 272-6986. The examiner can normally be reached on 7am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Raymond W. Addie/  
Primary Examiner, Art Unit 3671

10/22/09